

NURSE STAFFING LEVELS (WALES) ACT 2016

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes are for the Nurse Staffing Levels (Wales) Act 2016 (“the Act”) which was passed by the National Assembly for Wales on 10 February 2016 and received Royal Assent on 21 March 2016. They have been prepared by the Health and Social Services Group of the Welsh Government on behalf of Kirsty Williams AM, the Member in Charge of the Act, to assist the reader of the Act. They do not form part of the Act.
2. The Notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. Where a section or part of a section does not seem to require any explanation or comment, none is given.

BACKGROUND AND SUMMARY

3. Detailed background information about the rationale for this Act is available in the Explanatory Memorandum (published in 2014) and the revised Explanatory Memorandum (published in 2015) which accompanied the Bill during its passage through the National Assembly for Wales. They are available on the National Assembly for Wales website.
4. The Bill was prompted by concerns which arose from failings in nursing care in the UK. In England, they were highlighted in a series of reports:
 - the *Report of the Mid Staffordshire NHS Foundation Trust public inquiry* (commonly known as the Francis report);
 - the *Review into the quality of care and treatment provided by 14 hospital trusts in England: overview report* (commonly known as the Keogh review); and
 - *A promise to learn – a commitment to act* (commonly known as the Berwick review).
5. In Wales, the *Trusted to Care* report identified concerns about the way staffing levels were determined in the Princess of Wales Hospital and Neath Port Talbot Hospital.

6. The Act introduces a general, overarching duty on Local Health Boards and NHS Trusts in Wales, when considering how many nurses are required to meet all reasonable requirements, to have regard to the importance of providing sufficient nurses to allow nurses time to care for patients sensitively. This overarching duty applies when Local Health Boards and NHS Trusts are providing nursing services themselves and when they are securing the provision of nursing services from third parties.
7. The Act also places a duty on Local Health Boards and NHS Trusts to calculate nurse staffing levels in adult acute medical in-patient wards and adult acute surgical in-patient wards; to take all reasonable steps to maintain the staffing level that has been calculated on these wards and to make arrangements for informing patients of the nurse staffing level. The Act contains a regulation-making power which enables the Welsh Ministers to make regulations to extend the duty to calculate nurse staffing levels to additional settings. Such regulations are subject to the affirmative resolution procedure. The Act also specifies the method that must be used to calculate nurse staffing levels.
8. The Act places a duty on the Welsh Ministers to issue statutory guidance about the duty to calculate nurse staffing levels and the method of calculation. It places a duty on Local Health Boards and NHS Trusts to have regard to that guidance. In addition, each Local Health Board and NHS Trust to which the duty to calculate nurse staffing levels applies must submit a nurse staffing levels report to the Welsh Ministers every three years.
9. The Welsh Ministers' duties under the Act are to:
 - issue guidance about the duty to calculate and the method of calculation of nurse staffing levels;
 - prepare and publish a summary of the nurse staffing levels reports provided by Local Health Boards and NHS Trusts for a given reporting period; and
 - lay the nurse staffing levels reports submitted to them by Local Health Boards and NHS Trusts before the National Assembly for Wales.
10. The Welsh Ministers may make regulations to extend the duties to calculate and maintain nurse staffing levels, and to report to the Welsh Ministers, to additional clinical settings.

11. Local Health Boards and NHS Trusts in Wales must:
 - when deciding on the extent of nursing services that are necessary to meet all reasonable requirements, have regard to the importance of providing sufficient nurses to care for patients sensitively;
 - calculate and take steps to maintain nurse staffing levels in adult acute surgical and medical in patient wards, using prescribed methods;
 - have regard to guidance about the duty to calculate nurse staffing levels and the method of calculation of nurse staffing levels issued by the Welsh Ministers; and
 - provide reports about their nurse staffing levels.
12. There is a glossary at the end of these Notes which explains some of the specialist terms used in these Notes.

COMMENTARY ON SECTIONS

Section 1 – Nurse Staffing Levels

13. Section 1(1) inserts new sections 25A to 25E into the National Health Service (Wales) Act 2006¹. The new sections are inserted into Part 2 (health service bodies), in Chapter 4 (miscellaneous), before section 26.

Section 25A Duty to have regard to providing sufficient nurses

14. Section 25A introduces a new duty on Local Health Boards and NHS Trusts in Wales that provide nursing services.
15. Subsection (1) of section 25A provides that the duty in subsection (2) applies where a Local Health Board is considering the extent of provision of nursing services for its area necessary to meet all reasonable requirements.
16. Subsection (2) of section 25A places an overarching duty on a Local Health Board to have regard to the importance of providing sufficient nurses to allow nurses time to care for patients sensitively. This applies when it is providing the nursing services itself. When securing the provision of nursing services from a third party, a Local Health Board must have regard to the importance of ensuring that the provider has sufficient nurses to allow the nurses time to care for patients sensitively.
17. Subsection (3) of section 25A provides that where an NHS Trust in Wales provides nursing services, it must provide those services to such extent as it considers necessary to meet all reasonable requirements.

¹ 2006 c.42.

18. Subsection (4) of section 25A applies when an NHS Trust in Wales is considering the extent of provision of nursing services. In accordance with subsection (4) an NHS Trust in Wales has an overarching duty to have regard to the importance of providing sufficient nurses to allow nurses time to care for patients sensitively. This applies when it is providing the nursing services itself. When an NHS Trust in Wales is securing the provision of nursing services from a third party, it must have regard to the importance of ensuring that the provider has sufficient nurses to allow the nurses time to care for patients sensitively.
19. This overarching duty placed upon Local Health Boards and NHS Trusts in Wales - to have regard to the importance of providing sufficient nurses to allow nurses time to care for patients sensitively - applies whenever a Local Health Board or NHS Trust in Wales provides nursing services itself and when it commissions or funds care from any third party provider, in Wales or elsewhere. It therefore, applies, for example, when Local Health Boards and NHS Trusts are considering the provision of care within hospitals which they own and manage; when they are commissioning and/or directly providing continuing care; and when they commission nursing services for their residents from a provider in England.
20. In practice, it is envisaged that when Local Health Boards or NHS Trusts in Wales are securing the provision of services (i.e. commissioning services) they will, during the contracting process, consider the patient outcomes which may be affected by the nurse staffing levels on the wards on which the relevant patients will be receiving care. This is one way in which Local Health Boards and NHS Trusts might demonstrate that they have had regard to the importance of ensuring that third party providers from whom they are securing the provision of services have a sufficient number of nurses to allow the nurses time to care for patients sensitively.
21. Subsection (5) of section 25A provides that a Local Health Board or NHS Trust in Wales must (among other things) undertake workforce planning when having regard to the importance of providing sufficient nurses to allow nurses time to care for patients sensitively. Workforce planning includes planning the recruitment, retention, education and training of registered nurses.
22. It is considered that workforce planning is of fundamental importance to the success of the underlying policy objectives of the Act. Workforce planning is a process to ensure the right number of people with the right skills are employed in the right place at the right time in order to deliver an organisation's short- and long-term objectives. It constitutes a range of activities which may include succession planning; labour demand and supply forecasting; recruitment and retention planning; skills audit gap analysis; job design and risk management. See also subsection 25D(3).

Section 25B Duty to calculate and take steps to maintain nurse staffing levels

23. Section 25B introduces a duty for Local Health Boards and NHS Trusts in Wales (where applicable) to calculate and take steps to maintain nurse staffing levels and to inform patients of the level. This duty applies to the clinical settings specified in subsection (3) of section 25B only.
24. Subsection 25B(1) provides that where a Local Health Board or NHS Trust in Wales provides nursing services in a clinical setting to which this section applies, it must designate a person or a description of person, known as the “designated person”. The designated person must calculate the number of nurses appropriate to provide care to patients that meets all reasonable requirements in that situation. This is called the “nurse staffing level”. Local Health Boards and NHS Trusts in Wales must then take all reasonable steps to maintain that level and make arrangements to inform patients of the nurse staffing level.
25. A Local Health Board or NHS Trust might use various methods to inform patients of the nurse staffing level, such as a notice in the ward or information on a hospital website.
26. Subsection (2) of section 25B provides that the designated person must calculate the nurse staffing level in accordance with section 25C.
27. Subsections (3)(a) and (b) of section 25B specify the types of clinical settings where the duties to designate a person to calculate a nurse staffing level, take all reasonable steps to maintain it and tell patients about it applied when the Act received Royal Assent. These are adult acute medical in-patient wards and adult acute surgical in-patient wards.
28. Section 25B(3)(c) gives the Welsh Ministers the power to extend the settings to which the duties under section 25B apply by making regulations. The Welsh Ministers must make any such regulations using the affirmative procedure i.e. the regulations must be formally approved by the National Assembly for Wales before they can be made.

Section 25C Nurse staffing levels: method of calculation

29. Section 25C sets out the approach that a designated person must take when calculating the nurse staffing level and provides details as to how this may be used. This method of calculation is commonly known as the “triangulated approach” in the NHS in Wales, because it involves taking into account three different types of information (set out in (1)(a) and (b)).
30. The first of these is information that, in the professional judgment of the person adopting the approach, is relevant to the nurse staffing level. This would include things such as the skills, qualifications and experience of the staff, how sick the patients on the ward are and how much care they each need.

31. The second is an estimated appropriate ratio of nurses to patients that has been generated using an evidence-based workforce planning tool. Various evidence-based workforce planning tools are available. An acuity tool is one type, which records changes in levels of patients' acuity and dependency (see glossary) over a defined period of time. It is designed to establish an average staffing requirement over time, in order to help Local Health Boards and NHS Trusts with long-term workforce planning; specifically, to help determine how many posts there should be on a ward.
32. The third type is nurse-sensitive indicators, which are used to measure the extent to which patients' well-being is known to be particularly sensitive to the provision of care by a nurse. They include factors such as the number of falls resulting in harm that have occurred on a ward, patients' developing pressure ulcers whilst in hospital and errors resulting in harm when administering medicine to patients on a ward.
33. Subsection 25C(2) allows the designated person to calculate different nurse staffing levels for different times and depending on the conditions in which care is provided. This allows for a designated person to calculate a nurse staffing level that takes into consideration the actual number of patients on the ward and the type and level of care that those patients require.
34. In arriving at the nurse staffing level, the designated person can take account of the number of healthcare support workers who are providing care to patients under the supervision of a nurse or who are discharging duties delegated to them by a nurse. This is possible as subsection (6)(a) of Section 25A provides that in sections 25A to 25E inclusive, "references to a nurse providing care for patients include the provision of care by a person other than a nurse acting under the supervision of, or discharging duties delegated to the person by, a nurse".

Section 25D Nurse staffing levels: guidance
35. Section 25D provides that the Welsh Ministers must issue guidance to Local Health Boards and NHS Trusts (where applicable) about the duties under sections 25B and 25C, and that every Local Health Board and NHS Trust to which those sections apply must have regard to the guidance.
36. Subsection (2) of section 25D sets out a non-exhaustive list of the matters which the guidance may specify should be taken into account by a designated person when exercising their professional judgement.
37. For example, the guidance could set out that it is relevant to consider factors such as whether nurses are newly-qualified or how many years' general or specialist experience they have (see (2)(a)). It could also provide that a designated person should consider the care provided to patients by other health professionals or staff who will be present on a ward and their competencies and experience e.g. physiotherapists, trainee doctors or student nurses.

38. Subsection (3) of section 25D provides that the guidance may also make provision about workforce planning that Local Health Boards and NHS Trusts may undertake in order to enable them to comply with their duties under sections 25B and 25C.
39. Subsection (4) of section 25D prescribes the persons with whom the Welsh Ministers must consult before issuing guidance. In essence, the Welsh Ministers must consult with persons and organisations that are likely to be affected by the guidance. Specifically, they are Local Health Boards and any NHS Trust that is under a duty to have regard to the guidance; such organisations as appear to the Welsh Ministers to represent the interests of any providers of care homes or providers of independent hospitals in Wales that are likely to be affected by the guidance; organisations that appear to the Welsh Ministers to represent the interests of any other persons (i.e. other than providers of care homes and independent hospitals), which are likely to be affected by the guidance and such other persons likely to be affected by the guidance as the Welsh Ministers consider appropriate.

Section 25E Nurse staffing levels: reports

40. Section 25E details the reporting requirements for the Act.
41. Subsection (1) of section 25E provides that Local Health Boards, and any NHS Trust in Wales to which the duty to calculate a nurse staffing level in section 25B applies, must provide a nurse staffing levels report in accordance with the provisions of section 25E. This report can be a discrete report or it may be incorporated in a wider report.
42. Subsection (2) of section 25E provides that a nurse staffing levels report must cover a “reporting period” and lists the three specific types of information which must be covered in such a report namely: (a) the extent to which nurse staffing levels have been maintained; (b) the impact the Board or Trust considers that not maintaining nurse staffing levels has had on care provided to patients (subsection (2)(b) gives examples of the types of information that might be included under this heading) and (c) any actions taken in response to not maintaining nurse staffing levels.
43. A Local Health Board or NHS Trust may choose to provide additional information in the nurse staffing levels report.
44. Subsection (3) of section 25E provides that each nurse staffing levels report must be submitted to the Welsh Ministers no later than 30 days after the last day of the reporting period. The reporting period is set in accordance with the provisions of subsection (5).
45. Subsection (4) of section 25E provides that, after the expiry of each reporting period, the Welsh Ministers must (a) prepare and publish a document summarising the content of the nurse staffing levels reports submitted in respect of that reporting period, and (b) lay each report submitted to them in that period before the National Assembly for Wales.

46. Laying a report before the National Assembly for Wales means that a copy of the report must be given to the Table Office at the National Assembly for Wales. The Table Office publishes all documents officially laid before the Assembly on the Laid Documents section of the National Assembly for Wales website, where they can be viewed and downloaded.
47. Subsection (5) of section 25E establishes a three-year reporting cycle for the submission of nurse staffing levels reports. The “initial reporting period,” i.e. the first three-year period which must be the subject of a nurse staffing levels report, is the period of three years beginning with the commencement of section 25E. All subsequent reporting periods run for the period of three years beginning with the day after the last day of the preceding reporting period.
48. It is anticipated that the Welsh Ministers will choose to commence section 25E and so trigger the start of the “initial reporting period” on a date which will align it with existing planning and reporting cycles in the NHS in Wales.
49. Coupled with the requirement in subsection (3) that each report be submitted to the Welsh Ministers no later than 30 days after the last day of the reporting period, Local Health Boards and NHS Trusts (where applicable) will all submit their nurse staffing levels reports for the same three-year period to the same deadline.
50. Subsection (6) of section 25E defines “Complaints Regulations” for the purposes of this Act. Complaints made in accordance with the Complaints Regulations about care provided to patients by nurses is an example of the information that may be included in a nurse staffing levels report under section 25E(2)(b).
51. Section 1(2) of the Act amends section 203(6) of the National Health Service (Wales) Act 2006. The effect of the amendment is to make regulations under section 25B(3)(c) subject to the affirmative resolution procedure.
52. Section 1(3) of the Act amends section 207 of the National Health Service (Wales) Act 2006 to add “nurse staffing level” to the index of defined expressions in that Act.

Section 2 – Commencement

53. Section 2 provides that the provisions of the Act will come into force on Royal Assent, except for section 1, which will be commenced by order by the Welsh Ministers. Section 1 contains the substantive provisions in the Act. It is section 1 that inserts the new sections 25A to 25E into the National Health Service (Wales) Act 2006. Section 2 gives the Welsh Ministers the flexibility to decide when to commence section 1 by using a commencement order. The commencement order may commence different parts of section 1 at different times and for different purposes and make consequential, transitory or savings provisions in connection with the coming into force of a provision of the Act.

Section 3 – Short title

54. This section establishes the Act’s title as the Nurse Staffing Levels (Wales) Act 2016.

RECORD OF PROCEEDINGS IN THE NATIONAL ASSEMBLY FOR WALES

55. The following table sets out the dates for each stage of the Act’s passage through the National Assembly for Wales. The Record of Proceedings and further information on the passage of this Act can be found on the National Assembly for Wales website at: http://www.assembly.wales/en/bus-home/bus-legislation/Pages/assembly_acts.aspx.

Stage	Date
Introduced	1 December 2014
Stage 1 - Debate	3 June 2015
Stage 2 Scrutiny Committee - consideration of amendments	25 November 2015
Stage 3 Plenary - consideration of amendments	3 February 2016
Stage 4 Approved by the Assembly	10 February 2016
Royal Assent	21 March 2016

GLOSSARY

56. In these Explanatory Notes, the terms set out in the left-hand column of the table below have the meanings attributed to them in the right-hand column of the table.

Term	Description
dependency	The amount of care a patient needs.
designated person	A person or description of a person who, for the purposes of the Act, may be designated to calculate the number of nurses appropriate to provide care to patients that meets all reasonable requirements in that situation.
nurse-sensitive indicator	An indicator which reflects the extent to which patients' well-being is known to be particularly sensitive to the provision of care by a nurse.
nurse staffing level	This is the description given by the Act for the number of nurses appropriate to provide care to patients, that meets all reasonable requirements in that situation.
nurse	Means a registered nurse. In accordance with section 5 and Schedule 1 of the Interpretation Act 1978 ² registered nurse means a nurse registered in the register maintained under article 5 of the Nursing and Midwifery Order 2001 ³ by virtue of qualifications in nursing or midwifery as the case may be.
triangulated approach	A technique for calculating the number of nurses that are to be deployed in a care setting which uses professional judgement, data from a relevant acuity tool, and the levels of nurse-sensitive indicators.

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² 1978 c.30.

³ S.I. 2002/253.